

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

AUG 10 1998

Emergency Petition of Bell Atlantic - )  
West Virginia for Authorization to )  
End West Virginia's Bandwidth Crisis )

CC Docket No. 98-111 COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**OPPOSITION OF HYPERION TELECOMMUNICATIONS, INC.**

In this petition, which is the latest in a string of attempts by RBOCs to circumvent the market opening requirements of the 1996 Act<sup>1/</sup> with respect to RBOC-provisioned data services, Bell Atlantic - West Virginia ("BA-WV") claims that it must rescue West Virginia from its alleged bandwidth crisis. In this so-called "emergency" petition, BA-WV has utterly failed to explain what "crisis" in West Virginia justifies and end-run around the law.<sup>2/</sup> BA-WV has had seventeen months (since the passage of the 1996 Act) to make itself eligible to provide in-region interLATA service in the state of West Virginia. Now, notwithstanding the fact that nearly all West Virginia schools use the Internet, and half of the existing classrooms are wired, BA-WV seeks to provide data services on an interLATA basis to *all* West Virginia consumers immediately, out of their alleged concern that schools may not have high-speed access by the beginning of the school year. There is no showing that the situation in West Virginia is unique from other similarly-situated states, much less that there

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<sup>1/</sup> "Act" refers to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and provisions of both.

<sup>2/</sup> It is unclear what level of emergency excuses a Petitioner from serving the other parties involved in a docket. It does not appear that BA-WV served its petition on any participants in this ongoing proceeding.

is some health, safety or other dire concern warranting immediate emergency action. In fact, the BA-WV Petition's sole legal authority rests on Section 706's general prescription to encourage advanced telecommunications services. For these reasons, Hyperion respectfully requests that the Commission deny the BA-WV Petition and, if the Commission deems it appropriate, address it as part of its overall consideration and resolution of this and related dockets.<sup>3/</sup>

BA-WV cannot be allowed to use West Virginia consumers as pawns simply because it stands to gain by expanding its own data offerings in the state. Apparently unsatisfied with the Commission's progress in acting on its original petition in this docket, it has now chosen to rally West Virginia's students and public officials. However, the Act recognizes that consumers can enjoy better and faster access to the Internet, as well as an entire range of savings and innovation, if incumbents like BA-WV will create an environment through which competitors can easily enter the market and thereby provide *a choice* in local telecommunications services. Thus, besides exploiting its own new infrastructure (which it was given incentives to deploy<sup>4/</sup>), BA-WV must demonstrate what it has done to serve *competition* for West Virginia consumers.

Even if BA-WV's first priority is to provide its own services to schools and public institutions, its "emergency" Petition is considerably overbroad and does not constitute a "narrow request for incidental, interim relief."<sup>5/</sup> Rather than tailor the relief that it seeks for the schools and public institutions on which the Petition focuses, BA-WV seeks interLATA relief *by the beginning*

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<sup>3/</sup> CC Docket Nos. 98-26, 98-32 and 98-78.

<sup>4/</sup> See Petition, Attachment 4, Affidavit of Billy Jack Gregg; Petition, at 7.

<sup>5/</sup> See Petition, at 1, n. 2.

*of the school year for all of its data applications.* Thus, the relief that BA-WV contemplates is much wider than the evidence that it cites. Moreover, the Petition does not explain to what the requested relief is "incidental," nor how the relief is designed to be "interim." Despite the "famine" that BA-WV paints, BA-WV is careful to point out that even if granted the requested relief, it will not be able to ensure what it promises by the beginning of school.<sup>6/</sup>

BA-WV may not be permitted to hold itself above the law. First, BA-WV seeks to avoid demonstrating that it has opened local West Virginia markets sufficiently to be eligible to provide interLATA services in compliance with Section 271. Second, the precedent BA-WV cites for modifying LATA boundaries for extended area services is inapposite to the relief it currently seeks. Third, BA-WV again attempts to invoke Section 706 of the 1996 Act, citing no legal basis to warrant the "urgency" it requests of the Commission.<sup>7/</sup> By its terms Section 706 provides for a Notice of Inquiry -- not streamlined emergency measures. In any case, BA-WV relegates to a footnote the very pivotal issue of why forbearance from enforcing the Act's Section 271 restrictions is ever permissible under Section 10, a section that expressly forbids same. If BA-WV satisfies the Section 271 Competitive Checklist, it will be eligible to provide in-region interLATA authority without waivers from the Act's procompetitive market opening provisions.

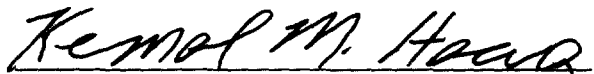
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<sup>6/</sup> BA-WV complains mightily about having to "cobble" together a network. *See* Petition, at 4. To the extent it has accurately portrayed its efforts to purchase capacity from various carriers, it should take careful note of any special pitfalls that it encounters (as well as the classic stumbling blocks that incumbents have erected against CLECs). In so doing, it can assure the Commission that it is in a position to preempt any difficulties in dealing with competitors, and demonstrate all the easier that it has adequately opened local markets in the state.

<sup>7/</sup> *See* Petition, at 8.

BA-WV has not even purported to fulfill its obligations to West Virginia consumers by demonstrating that it has complied with those provisions of the Act that will entitle it to provide interLATA services. Instead, BA-WV has identified an opportunity to advance its own agenda. Hyperion respectfully submits that BA-WV's petition should be denied or considered in the context of the Commission's overall resolution of the RBOCs' market-opening requirements under the Act.

Respectfully submitted,



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Dated: August 10, 1998

**CERTIFICATE OF SERVICE**

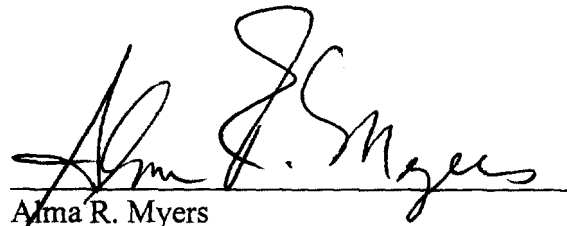
I hereby certify that on this 10th day of August, 1998, I have caused copies of the foregoing Opposition of Hyperion Telecommunications, Inc. to the Emergency Petition of Bell Atlantic - West Virginia for Authorization to End West Virginia's Bandwidth Crisis, in CC Docket No. 98-11, to be served by U.S. Mail upon the following parties (by hand delivery where indicated with an "\*").

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